



City of Carmel

Carmel Board of Zoning Appeals

Hearing Officer

Friday, June 1, 2007

The meeting was held at 3:30 PM in the Department of Community Services Conference Room, third floor of City Hall, Carmel, Indiana on Friday, June 1, 2007. The Hearing Officer was Kent Broach.

Department of Community Services Staff in attendance was Christine Barton-Holmes. John Molitor, Legal Counsel, was also present.

D. Public Hearing

1-3d. 10555 Hussey Lane - Accessory Building

The applicant seeks the following development standards variance approval:

Docket No. 07030029 V Section 25.01.01.B.1 accessory building height

The site is located at 10555 Hussey Ln. and is zoned S-2/Residence. Filed by Larry Jones-

Mr. Broach stated he had heard the original presentation at the May 21st hearing and was interested in any additional information and any conversations with Ms. O'Hara.

Present for the Petitioner: Larry Jones of Teagen Construction and Andi Metzel of Dann Pecar Newman & Kleiman.

Mr. Jones stated that prior to the May 21st hearing and throughout the course of planning, he had been working with Ms. Metzel on the process. They had put together some more documents and he had been relying on her and Ms. O'Hara to speak today to finish this up.

Ms. Metzel had prepared an outline of the project. Tab #1 showed the area and the property with the existing tennis courts. Tab #2 showed the proposed accessory building. It would replace the existing tennis court, running the same direction. The new proposed tennis court would be immediately to the north. There have been a number of communications between Mr. Jones and Zeff Weiss, an attorney in Indianapolis, who represents some immediate property owners. There is a letter at Tab #7 from Steve Pittman of Pittman Partners. He is the developer of The Reserve which is a large housing development immediately across Springmill Road. He had no objection to this project. There was no one at this meeting from The Reserve. They have not been contacted by any other remonstrators about the project. Ms. O'Hara would speak about her concerns and some objections from her client that she had discussed with Mr. Jones. If it is the entire use that is objectionable, there are not a lot of ways to compromise around that. There is a lot of proposed landscaping. The second image in Tab #2 gives an idea of the character of the property. The grade of the property is much lower where the proposed structure will be located than the Reinbold residence that Ms. O'Hara represents. There is a tree line, a fence line and a significant grade between the properties. The petition is really about 16 feet of additional height for an

accessory building. The grade is so low and they are in between the floodway and the flood fringe. It is a very limited area even though it is 15 acres. There is not a lot of area to build on with the existing Simon residence. By design they have chosen this little spot and tucked it in so that they can keep the existing trees and mature vegetation. The Simons like their privacy and want to keep it. That is why they are not tearing down trees for this project. Because of the grade, they lose 4 feet by creating the concrete base. Then they need to go higher for a basketball court. No variance would be needed if it were an outdoor basketball court or outdoor tennis court. But it is in a very low flood area and difficult to maintain anything without elevating it a little. The area does flood. It is not particularly sightly and they cannot use it year round. The Simons would like to use their property in the best way possible to maximize its value. At Tab #3 were a variety of photos which were just taken this week to give an idea of the existing vegetation. It is difficult to tell height and perspective, but the existing tennis court was shown. A twenty-five foot survey pole was included in the photos to give a perspective to the existing trees. None of the trees would come down. The second picture was the existing tennis court looking due west. The Reinbold home was on the opposite side of those trees, oriented a little to the south and facing north toward the southeast at an angle away from the Simon property. More pictures were shared of the trees and vegetation. There is a small road that currently runs through the Simon property. In order to get to the proposed accessory building, they will use this 9 foot road and a driveway to the building. The final picture in Tab #3 was looking west from the small road west to Hussey Lane which is not visible from this area. She pointed out some proposed landscaping of 23 shade-type trees and a number of different ornamental bushes. The current tennis court is green and does not stand out visually. The proposed basketball facility will have a green roof and the siding will be wood. The building is intended to be a brownish gray color which will blend with the environment and not stand out. A lot of effort had been made to try to fit things appropriately on this property and to put as much landscaping in as possible to add to the environment. She did not feel it was a detriment to the surrounding properties.

Remonstrance:

Ann O'Hara, Church Church Hittle & Antrim Attorneys, representing Jennifer and Dennis Reinbold at 10435 Hussey Lane, adjoining property owners. She had shared with the Reinbolds the proposed commitments from the May 21st hearing and the proposed landscaping plan. After reviewing it, from looking at Tab #2, everyone could see that it is still a 42-foot basketball barn that is going to be placed very close to the Reinbold property line. The landscaping will provide some privacy. But reviewing the front line, the Reinbold house is on a hill and is going to look down on this accessory building with its parking lot. This is a significant accessory building with exterior mounted flood lights that will be installed with motion sensors for security purposes. These will allow illumination outside the stated hours of the commitments and restrictions. This is not a small building or gazebo. It is essentially a large building, that for its intended purpose of basketball, has to have a certain amount of height and size. But it is within clear view of the Reinbold's property. Their concern is what this will do to the value of their property. Potential buyers may ask about the building and the amount of lights and that is a great concern. Other neighbors will not be faced with that challenge. She spoke with them about other reconfigurations. Because of the location of the property, they just felt this was not appropriate for their neighborhood. These are large estates that are residential in nature. This is not a small accessory building. It is a basketball barn. Looking at the statutory requirements, the Petitioner has the burden to prove. Her client has some real concerns about this large basketball barn and the impact on their property. Is this Petition creating some economical damage to the Simons? There might be other options. Could they somehow go underground? This is not going to be used for a commercial basketball barn, but maybe it is not an appropriate use for this particular community. The Reinbolds appreciate what Mr. Jones has done, but feel very strongly opposed to this variance.

Rebuttal:

Ms. Metzel stated that Ms. O'Hara is correct that it is the Petitioner's burden to prove this variance will not be injurious to the community. The idea that people put basketball courts on their property is not foreign in the State of Indiana. The idea that it would be an enclosed structure might not be available to everyone in every economic circumstance. The Simons have five children and the idea that they will be able to play basketball year round at their home is not unheard of. The majority of this 15 acre parcel along Williams Creek and Springmill Road is not an ideal place to put a structure of this nature because of the floodway. Then it probably would be visible from Springmill. If they went in front of the residence any closer to Hussey Lane, it would be seen by almost all of the neighbors. There has been a considerable amount of thought given to the location of this structure. This is not a public facility, so it would not be injurious to the public safety and morals. It is not going to create traffic in this estate area. It is not open to the general public. It is not an enormous parking lot proposed. It is a 9 foot drive path. They will most likely use a golf cart to access it, as opposed to car traffic. It is not visible from Springmill Road, 106th Street or Hussey Lane. She felt it was very speculative to assume if the Reinbolds want to sell the property someday, it might be de-valued by the fact of the basketball building. There is no basis to say that there is going to be a view from the home looking into or directly at this basketball building. The orientation of the Reinbold home is to the south and the east. It is not looking directly at or over this structure. It is not high enough to look over the existing trees. It is very important in looking at the second image at Tab #2 to note the grade differences. One of the things mentioned was the lighting on the exterior of the structure. Mr. Weiss had been very specific about what he wanted. Security to the community, the Simon family and the Reinbold family is all important. Putting some light sensors that would not be on all night, but would just go on if someone was walking in the area would probably be in everyone's best interest. In the commitments, they will only be 10 feet above grade which is 16 feet lower than the ground level of the Reinbold residence. That would be security lights going down, not toward their windows or front door. They have done everything to protect the safety of this structure and residence and not harm the neighbors. If the Ordinance is strictly applied against the Simons, she felt it did affect the value of their property and their use. With the floodway and flood fringe that runs through the property, there is not an ideal place where they can do any kind of expansion of this nature. The existing tennis court is a maintenance problem, but would be much more useful to them if it were relocated. Nothing shows that this use would adversely affect the neighboring properties. They are doing everything they can by committing to the landscaping and lighting impact. Mr. Jones could answer any construction questions.

Mrs. Barton-Holmes gave the Department Report. As stated at the May 21st hearing, the Department is recommending positive consideration. Usually they would not be in support of a structure that is so much taller than what is permitted. However, in this instance, they believe the heavily wooded site and grade change do mitigate the increase in height. They asked for one addition to the proposed commitments and that would be the lights on the exterior have a 90 degree cutoff. That would further mitigate any light flow onto adjacent properties. The Department recommended positive consideration of the Petition with Commitments as filed.

Mr. Broach asked if the roof and tennis court were both green.

Mr. Jones confirmed the color. They will clad the steel frame in a hardi-plank siding. There will be some windows around the top perimeter. They will be kalwall which looks like a permanently diffused panel. The idea is the benefit of some exterior light during the day without casting shadows. Any illumination inside will be equally diffused going out. They have tried to put together exterior elevations to look architecturally pleasing.

Mr. Broach asked Mr. Jones to confirm the commitments for exterior lighting and landscaping as indicated in Mr. Weiss' communication.

Mr. Jones stated that Mr. Weiss represented Drs. Sondhi and Boeglin who were concerned about high lighting or illumination or something that would draw attention to the building. They had put the commitments together to make sure everybody understood the lighting put around the building would be necessary for access. There was no intent to draw any attention to the building. It was fine with them to put some kind of cutoff lighting as requested by the Department. The drive and parking area shown are bare necessities for service and turnarounds at the building. The Simons like the kids to park at the house so that they can check for who is coming and going. Then they can walk down to the accessory building or tennis court.

Mr. Broach asked Mr. Jones to point out the Reinbold residence on the map.

Mr. Jones indicated its location. It sets south and to the west.

Mr. Broach was interested in how much new landscaping was going in between the accessory building and the Reinbolds.

Mr. Jones stated they would put more if there was room for any more.

Ms. Metzel indicated the existing tennis court which will be the location of the new accessory building. She stated there was already a lot of vegetation and she did not know where they would put more. She indicated an existing good-sized tree that will be right outside the building. They confirmed there would be no trees taken out and they were adding 23 shade-type trees.

Mr. Jones stated everyone's view would be down onto the building, so the evergreens will do for the foundation. The shade trees are needed to break up the view.

Ms. Metzel stated Mrs. Barton-Holmes comment about the lighting was well-taken and made sense. She indicated it will be 82 feet from the new accessory building to the Reinbold property line, but 200 feet to the residence, not to mention the grade, distance and existing tree line and shrubs. The idea that light would shine over 200 feet would be amazing.

Ms. O'Hara stated the Reinbold house is located on a hill, so that it is looking down on the Simon property. That causes their concerns.

Mr. Broach stated that generally he likes to go to the site. This is the only one in his limited time on the BZA that he could not visit. It is in the middle of private property, so he could not get the sight lines that he would normally get. Therefore, he would have to act on the evidence presented. Either party can appeal his decision to the full Board of five. It wouldn't be prejudiced; it would be heard like a new item.

Mr. Broach **APPROVED Docket No. 07030029 V, 10555 Hussey Lane Accessory Building.** He felt the Petitioner met their burden and he agreed with the Department in terms of the development of the Findings of Fact. He understood the Reinbold's concerns, but based on the evidence presented he did not see how they would be impacted. He delegated to the Staff the responsibility to develop the Findings of Fact based upon the Department Report and the stated Commitments.

Ms. O'Hara asked if those Commitments would state the ones made by the Staff and Mr. Jones.

Mr. Broach stated the Commitments would be for lighting and landscaping. They would have 14 days to file an Appeal. Based on the grade, landscaping and height of the existing trees he felt there was a sufficient buffer.

E. Old Business

There was No Old Business.

F. New Business

There was No New Business.

G. Adjournment

The meeting was adjourned at 4:15 PM.

Kent Broach, Hearing Officer

Connie Tingley, Secretary